

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

CONNECTICUT BANK OF	)	
COMMERCE,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 05-762 SLR
	)	
THE REPUBLIC OF CONGO,	)	
	)	
Defendant;	)	
	)	
CMS NOMEKO CONGO INC.,	)	
	)	
Garnishee.	)	

**GARNISHEE CMS NOMEKO'S MOTION FOR LEAVE  
TO FILE SURREPLY BRIEF IN OPPOSITION TO  
AF-CAP'S MOTION TO REMAND ACTION**

Garnishee CMS Nomeco Congo Inc. (now named CMS Nomeco Congo LLC) ("CMS Nomeco") hereby moves for leave to file a Surreply Brief in Opposition to the Motion to Remand Action (D.I. 3) that has been filed by Af-Cap, Inc., which asserts that it is the assignee of plaintiff Connecticut Bank of Commerce. The proposed Surreply Brief is attached as Exhibit A.

Although surreply briefs are not contemplated by the Local Rules, CMS Nomeco submits that a surreply brief is appropriate and necessary here. The reason is that in its Reply Brief in Support of its Motion to Remand Action (D.I. 9), Af-Cap made three arguments that it had not raised in its Opening Brief. Af-Cap thus violated Local Rule 7.1.3(c)(2), which provides that "[t]he party filing the opening brief shall not reserve material for the reply brief which should have been included in a full and fair opening brief." Unless CMS Nomeco is permitted to file its Surreply Brief, the inevitable result of Af-Cap's tardy assertion of those three issues will

be that the Court will be deprived of the opportunity to review both parties' viewpoints and interpretation of relevant case law and statutes regarding such issues. CMS Nomeco's proposed Surreply Brief is strictly limited to the three arguments that Af-Cap raised for the first time in its Reply Brief; it does not address matters that were included in either Af-Cap's Opening Brief or CMS Nomeco's Answering Brief.

For those reasons, it would be helpful to the Court in resolving the Motion to Remand Action if CMS Nomeco were permitted to present its response to Af-Cap's three new contentions in the form of its proposed Surreply Brief.

Pursuant to Local Rule 7.1.1, CMS Nomeco certifies that it has made a reasonable effort to reach agreement with Af-Cap respecting the matters set forth in this Motion, but that the parties were unable to reach agreement. CMS Nomeco wishes to add that it does not believe that there is any good faith basis for Af-Cap to have refused to consent to the filing of the Surreply Brief.

WHEREFORE, CMS Nomeco requests that the Court grant its Motion for Leave to File Surreply Brief in Opposition to Af-Cap's Motion to Remand Action.

Respectfully submitted,

OF COUNSEL:

Guy S. Lipe  
Jason M. Powers  
VINSON & ELKINS L.L.P.  
First City Tower  
1001 Fannin Street, Suite 2300  
Houston, TX 77002-6760  
(713) 758-2222

Dated: December 14, 2005

/s/ M. Duncan Grant

M. Duncan Grant (Del. Bar No. 2994)  
James C. Carignan (Del. Bar No. 4230)  
PEPPER HAMILTON LLP  
Hercules Plaza, Suite 5100  
1313 N. Market Street  
P.O. Box 1709  
Wilmington, DE 19899-1709  
(302) 777-6500

Attorneys for Garnishee CMS Nomeco Inc.

1832463